

## **Appeal Panel Hearing**

### **Case of**

**Mr Robert Ledzinski  
Warsaw, Poland**

### **On**

Friday 27 March 2020

### **By Skype video conference**

### **Panel**

Sir Michael Burton GBE QC (Lay Chair)  
Patrick Bligh-Cheesman (Lay Member)  
Justin Mason (Surveyor Member)

### **Legal Assessor**

Peter Steel

**The appeal was dealt with on the papers and there were no appearances**

### **Hearings Officer**

Emma Jones

### **Introduction**

1. This is Mr Ledzinski's appeal against the sanction imposed by a Disciplinary Panel on 5 November 2019 for a failure to comply with CPD requirements for the year 2018.

## Burden and standard of proof

2. Under Rule 165 of RICS' Disciplinary, Registration and Appeal Panel Rules Version 8 with effect from 1 October 2019 ("the Rules"), the burden is on the Appellant to satisfy the Appeal Panel that the order being appealed was wrong.

## Background

3. Since 2013 RICS members are required to undertake a minimum of 20 hours Continuing Professional Development (CPD) each calendar year (January to December). Rule 6 provides: "*Members shall comply with RICS' requirements in respect of continuing professional development.*"
4. The Disciplinary Panel heard Mr Ledzinski's case on 5 November 2019. The Panel dealt with the case by telephone conference and Mr Ledzinski did not attend. The Disciplinary Panel found that Mr Ledzinski was in breach of Rule 6 for not completing and recording at least 20 hours of CPD on the RICS CPD portal for 2018. It found that this breach rendered him liable to disciplinary action. Noting that this was Mr Ledzinski's third breach of the CPD requirements and that a caution had been imposed for the breach in 2016 and a caution and a fine for the 2017 breach, the Panel ordered that Mr Ledzinski be subject to the following condition:

*"You will comply with RICS' requirements in respect of Continuing Professional Development (CPD) for the period 1 January 2019 to 31 December 2019 and 1 January 2020 to 31 December 2020 by completing and recording, or causing to be recorded, at least 20 hours of CPD for each, of which at least 10 hours must be formal, on the RICS CPD Portal by 31 January 2020 and 31 January 2021, respectively.*

*Failure to comply with this condition will result in Mr Ledzinski's automatic expulsion."*

5. Having apparently submitted his CPD for 2019 on 3 February 2020, Mr Ledzinski was therefore expelled from membership by operation of this condition.
6. On 18 February 2020, Mr Ledzinski's applied to appeal the decision of the Disciplinary Panel out of time. The RICS did not object to the appeal being lodged out of time and so on 26 February 2020, the Chair of the Conduct and Appeals Committee allowed the appeal to be brought out of time.
7. On 10 March 2020, Mr Ledzinski submitted his application setting out his grounds of appeal.

## Mr Ledzinski's Appeal against Sanction

8. In his application for appeal, Mr Ledzinski asserted that he did submit his CPD in advance of the deadline of 31 January 2020, having been aware of the need to do so in light of the

decision of 5 November 2019. He said that he had logged his records around mid-January 2020 on the RICS Portal and had amended them at the end of January 2020. Mr Ledzinski said that he had then logged into the system on 3 February 2020 and made some further amendments. He contended that this had led the RICS system to record 3 February 2020 erroneously as the date on which the CPD was submitted.

9. Mr Ledzinski further stated:

*"...I confirm that I understand that I was obliged to record my CPD for 2019 by the end of January 2020. I understand that the system recognizes the date of my CPD recording as of 3 February 2020.*

*Although I accept the deadline for recording CPD by 31 January 2020 was an imposed condition in order to maintain my membership, I also admit that expulsion from membership based on such a breach, if you decide that it was breach indeed, is in my opinion a very high punitive action. Therefore, I would like to request for allowing me to rectify this situation. RICS membership is a great contribution to my career. I hope you will give me a chance to preserve it."*

## **The RICS' submissions in response to the Appeal**

10. In its Response dated 12 March 2019, the RICS indicated that it did not oppose the appeal, noting that ordinarily, the submission CPD that was late by three days would not lead to a realistic prospect of a case to answer that the breach was sufficiently serious to engage liability to disciplinary action. It confirmed that Mr Ledzinski had completed and submitted the required CPD for 2019.

## **Appeal Panel's Decision**

11. The Panel carefully considered all of the evidence before it, as well as the written submissions of Mr Ledzinski and the RICS. It accepted the advice of the Legal Assessor.
12. The Panel was satisfied in the light of the information available to the Disciplinary Panel, that it was entirely appropriate for it to have made the conditional order set out above. However, in the light of the circumstances as now explained by Mr Ledzinski in his application for appeal, the Appeal Panel was of the view that the effect of that sanction was disproportionately harsh and therefore, to that limited extent, wrong. It was prepared to accept, on the balance of probabilities, that Mr Ledzinski had attempted to record his CPD for 2019 in good time, but had not succeeded as a result of some as yet unexplained glitch in the system.
13. The Appeal Panel therefore allowed the appeal and exercised its power under Rule 181(b) to vary the sanction imposed by extending the deadline for submission of his 2019 CPD until the date on which it was submitted i.e. 3 February 2020. It therefore ordered that the

relevant part of the order of the Disciplinary Panel dated 5 November 2019 be varied so as to read as follows:

*“You will comply with RICS’ requirements in respect of Continuing Professional Development (CPD) for the period 1 January 2019 to 31 December 2019 and 1 January 2020 to 31 December 2020 by completing and recording, or causing to be recorded, at least 20 hours of CPD for each, of which at least 10 hours must be formal, on the RICS CPD Portal by 3 February 2020 and 31 January 2021, respectively.*”

14. The Panel reminded Mr Ledzinski that any future failure to comply with his CPD obligations would almost certainly lead to expulsion from membership.
15. The Panel noted that in such circumstances as this, it would be preferable if rather than having to pursue an appeal, the Rules permitted those such as Mr Ladzinski to make an application to the Panel on paper for an extension of time for compliance with the condition, and allowed the Panel to grant such an extension if appropriate.

## Publication and Costs

### Publication

16. The Panel considered the guidance as to publication of its decisions, which indicates that it is usual for the decisions of the Panel to be published on RICS’ website and in RICS Modus. The Panel sees no reason for departing from the normal practice in this case. Part of the role of the Panel is to uphold the reputation of the profession, and publication of its decisions is an essential part of that role.
17. The Panel therefore orders this decision be published on RICS’ website and in RICS Modus, in accordance with Supplement 3 to the Sanctions Policy 2008 version 6.

### Costs

18. RICS made an application for costs in the total sum of £200 and submitted a schedule of their costs to the Panel .
19. The Panel considered that in light of its decision above and the unusual circumstances of this case, it would not make any order for costs.